

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
HOME RULE ADVISORY GROUP**

**MINUTES
March 18, 2014**

CHAIR

Dr. Joseph Lyou, Governing Board member

MEMBERS

Present: The following members participated from SCAQMD Headquarters: Dr. Elaine Chang; Mike Carroll; Curtis Coleman; Jayne Joy; Bill LaMarr; Joy Langford; Stephanie Molen on behalf of Enrique Chiock; Art Montez; Bill Quinn; Terry Roberts; David Rothbart; and Lee Wallace. The following members participated by conference call: Elizabeth Adams (EPA); Chris Gallenstein (CARB); and Rongsheng Luo (SCAG).

Absent: Larry Rubio and Mike Wang

AQMD STAFF

Philip Crabbe, Jill Whynot, Bill Wong, and Marilyn Traynor

OTHER ATTENDEES

Mark Abramowitz (Board Consultant to Dr. Lyou); Earl Elrod (Board Consultant to Mayor Yates); Susan Stark (Tesoro), Candice Gantt (SCE); Tom Gross (SCE); Dan McGivney (So Cal Gas & SDG&E).

WELCOME/INTRODUCTIONS

The meeting was called to order at 10:00 a.m. by Dr. Joseph Lyou, Chairman. Other participants at the meeting were: Dr. Elaine Chang (SCAQMD); Bill Wong (SCAQMD); Mike Carroll (Latham & Watkins on behalf of the Regulatory Flexibility Group); Curtis Coleman (Southern California Air Quality Alliance); Jayne Joy (Eastern Municipal Water District); Bill LaMarr (California Small Business Alliance); Joy Langford (Vasari Energy Capital); Stephanie Molen on behalf of Enrique Chiock (Breathe L.A.); Art Montez (AMA International); Bill Quinn (CCEEB); Terry Roberts (American Lung Association of California); David Rothbart (Los Angeles County Sanitation Districts); and Lee Wallace (So Cal Gas & SDG&E). The following individuals participated by conference call: Elizabeth Adams (EPA); Chris Gallenstein (CARB); and Rongsheng Luo (SCAG).

APPROVAL OF MINUTES

On motion of Bill LaMarr and seconded by David Rothbart, the minutes of the February 19, 2014, meeting were unanimously approved without objection.

LEGISLATIVE UPDATE

Philip Crabbe provided the following report on items that were discussed at the Legislative Committee meeting on March 14, 2014:

State

Over 2,000 bills were introduced this legislative year. Combined with the carryover bills from last year, approximately 3,100 bills are currently active.

A new carbon tax/gas tax proposal bill was introduced by Senate President pro Tem Darrell Steinberg. The bill calls for a tax on fuels paid directly by consumers, and in exchange those fuels will not fall under the Cap and Trade Program. The bill is being opposed by the environmental community, transit agencies, and others. SCAQMD has not taken a position on the bill.

The Committee was given an update on AB 1330 (Pérez). Currently only conceptual enhancements and no specific dollar amount increases of penalties have been proposed by SCAQMD. (NOTE: At the last HRAG meeting, Mr. Crabbe had reported as follows: SCAQMD staff has been working with CAPCOA, Speaker Pérez's staff, and environmental groups on language for AB 1330 (Pérez). The bill focuses on seeking to increase penalties for serious serial violators of environmental laws. SCAQMD has provided some draft legislative language for consideration and will continue to work with the author and stakeholders to move toward common language.)

The following bill was taken to the Legislative Committee for consideration:

Bill	Recommended Action
AB 2208 (Allen)-California Environmental Quality Act: Southern California International Gateway Project (SCIG).	Oppose

AB 2208 would preempt legal challenges filed by SCAQMD and others and would streamline the judicial process to facilitate the development of the Southern California International Gateway (SCIG) Project, a proposed project for the construction of a near-dock intermodal rail yard at the Port of Los Angeles. Staff recommended a position of oppose. The Committee approved staff's recommendation. Dr. Lyou noted that his staff at the Coalition for Clean Air was told that the author plans to let the bill sit in the Rules Committee.

Discussion on State Issues

Mr. Montez asked if the situation with the Exide Battery Recycling plant was the driving force behind AB 1330 (Pérez). Ms. Whynot explained that the Chevron Refinery incident in the Bay Area, which sent thousands of people to seek emergency care, may have been the impetus. Mr. Quinn emphasized that CCEEB is interested in being included in the discussions with the air districts, stakeholders, and the Speaker's office on the AB 1330 bill language. Dr. Lyou suggested that CCEEB work directly with the bill's sponsors. Mr. Montez expressed concern that the additional fines may not be a sufficient deterrent to businesses who may view the fines as a cost of doing business. Mr. Crabbe responded that the intended purpose of AB 1330 is to enhance the current law so as to have a more deterrent effect. Mr. Quinn commented that the companies that CCEEB represents strive for 100 percent compliance which is driven by conscience and not by the amount of the penalty. Dr. Lyou added that the SCAQMD's monthly enforcement reports to the Governing Board have shown companies (not represented by CCEEB) that are not in compliance and that have been paying daily fines or are under Orders for Abatement over the period of five to six years. He explained that even if this is not the companies' fault, this situation is not acceptable. He commented that he hopes for a reasonable amendment to the Health and Safety Code that will deter the serial violators.

Federal

Congress is working on the surface transportation reauthorization bill for the successor to MAP-21, which expires in September 2014. There were seven MAP-21 related hearings that occurred recently in Congress, both in the House and Senate. The Senate Environmental Public Works Committee plans to mark up its version of MAP-21 in April (without funding details); the House plans to mark up its version of MAP-21 in early summer; and the Administration will submit its plan regarding MAP-21 to Congress in mid-April. Although not many major revisions to MAP-21 are planned, Congress does plan to add a rail title to the bill. SCAQMD staff presented proposed MAP-21 bill language to the Legislative Committee for discussion. Staff will again present this language to the Legislative Committee, after input is received from various external agencies, at the next meeting for further discussion.

The Senate recently held an all-night session on climate change. In the end, however, this session demonstrated that there are not enough votes to move any federal climate change legislation forward this year.

The House Appropriations Interior Subcommittee will be holding a hearing this month to discuss EPA's budget for Fiscal Year 2015.

The following bills were taken to the Legislative Committee for consideration:

Bill	Recommended Action
S. 488 (Stabenow) Advanced Vehicle Technology Act H.R. 1027 (Peters) of 2013	Support and recommend amendments

S. 488 (Stabenow) and H.R. 1027 (Peters) are companion bills that relate to advanced vehicle technology. The bills would create a program, administered by the U.S. Department of Energy, to provide support for clean vehicle research, development, demonstration, and commercialization. Staff recommended a position of "support and recommend amendments." The amendments would call for reducing criteria pollutant emissions and achieving zero or near-zero emission engine technologies, rather than just focusing on achieving greater fuel efficiency. The Legislative Committee approved staff's recommendations.

Discussion on Federal Issues

Mr. Montez was concerned that H.R. 3963, which would require the United States Postal Service to reduce its fleet petroleum consumption by 2% each year over the next 10 years, did not go far enough. Mr. Crabbe responded that he believes there is a Governor's initiative that is focused on trying to advance a million EVs and on funding infrastructure. Stephanie Molen added that Senator Pavley sponsored a bill that was passed which resulted in a large number of vehicles in the state's fleet to be changed over to hybrids. Dr. Lyou noted that the California Air Resources Board studied the issue and that legislation was introduced in response to CARB's study; however, the legislation did not pass. Dr. Lyou added that the Department of Energy Clean Cities Program, which supports local agencies, has also addressed this issue. Mr. Montez asked if SCAQMD has data that show: (1) the total number of in-use vehicles for the local, state, and federal government fleets, and (2) how many of those vehicles have been converted over to cleaner technology. Dr. Lyou asked that Mr. Montez's question be forwarded to TAO staff for a response

[NOTE: Subsequent to the meeting, in response to the request, TAO staff reported that SCAQMD does not collect data for light-duty vehicles; however, the total number of heavy-duty government vehicles is approximately 8,731 and is broken down as follows:

- Local Governments – 7,371 (5,607 public works vehicles, 390 street sweepers, 1,374 refuse trucks)
- State Government (Caltrans) – approximately 700
- Federal Government (Postal Service) – approximately 660.]

UPDATE REGARDING LITIGATION ITEMS AND RELATED EPA ACTIONS

Bill Wong provided the following update (see Attachment 1-Litigation Update):

Case No. 6 (Natural Resources Defense Council, Inc., et al. v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 13-70544)

EPA has moved to extend the briefing schedule through October 2014, and Petitioners have not objected. The parties are waiting for a decision from the court.

Discussion on Case No. 6

Dr. Lyou asked when a ruling may be expected. Mr. Wong responded that it appears that the Ninth Circuit Court may want to hear all of the Clean Air Act-type cases together, possibly on the same day or over several days; and the court may be waiting for the last case to be fully briefed before establishing a hearing date. Mr. Carroll concurred and added that the briefs for the last case (1318) are not due until summer. In response to Ms. Joy's request, Mr. Wong agreed to inform the HRAG members if, and when, the extension is approved.

Discussion on Case No. 3

Mr. Luo asked if any agreement was reached after the mediation conference calls. Mr. Wong responded that, because he did not participate in the conference calls, he is not aware of the outcome. Dr. Lyou noted that the issue has not been resolved.

EPA AND FEDERAL ACTIVITIES

Elizabeth Adams reported as follows:

The SCAQMD's lead attainment plan was published in the Federal Register on March 12, 2014 (<https://www.federalregister.gov/articles/2014/03/12/2014-05227/approval-and-promulgation-of-implementation-plans-state-of-california-2012-los-angeles-county-state>).

There is a national effort to reduce the SIP backlog, which EPA Region IX is diligently addressing (With 35 Districts in California, EPA Region IX receives the most plans).

Discussion

Mr. Wallace expressed concern with the possibility of EPA reducing the NAAQS for ozone to 60 ppb, which is approximately the South Coast region's normal background level of natural occurring ozone from a combination of VOCs and NOx. Mr. Wallace asked if there will be an opportunity for discussion and for providing comments. Ms. Adams responded that there is an active, ongoing evaluation; and she offered to forward contact information to the HRAG for them to provide

comments to EPA on the issue. Dr. Chang added that modeling data from the AQMP is available for analysis.

Mr. Quinn asked Ms. Adams if she had any comments on the EPA's recent environmental justice conference. Ms. Adams responded as follows: Over 100 representatives from all regions attended the information-sharing event. The conference focused on three different subjects: (1) sustainable communities; (2) community outreach; and (3) community monitoring. One issue discussed was the challenge of what to do with the data collected by communities that perform their own monitoring. Dr. Lyou agreed that, as they become more prevalent, community-based monitoring and personal monitoring devices will be important issues in the near future. He added that several agencies, including EPA, CARB and CCEEB, will be discussing these issues at upcoming events. Mr. Montez felt that the data collected from this type of monitoring will not be effective unless the impacted communities are provided with remedies and are included in the decision making process. Mr. Montez asked what the environmental agencies and others are doing to address issues of diversity and to reach out to the most impacted and disadvantaged communities. Dr. Lyou asked staff to provide Mr. Montez with the contact information for the DEO of Legislative & Public Affairs, Lisha Smith; and he suggested that Mr. Montez contact Ms. Smith to discuss SCAQMD's outreach efforts. Ms. Adams added that EPA's CARE (Community Action for a Renewed Environment) Grant Program has been successful, although activity on the program has slowed due to budget constraints. She added that the few CARE Projects that have continued have been an effective way for communities to address areas of concern.

CARB REGULATORY ACTIVITIES

Chris Gallenstein reported as follows:

CARB's March 20th Board meeting was canceled. The next board meeting is scheduled for April 24 and 25.

A cap and trade reserve sale is scheduled for April 3, 2014

(<http://www.arb.ca.gov/cc/capandtrade/auction/auction.htm#april2014rs> . NOTE: the reserve sale was subsequently canceled).

On April 3, 2014, a public workshop is scheduled to discuss development of Assembly Bill 118 Air Quality Improvement Program Funding Plan and funding recommendations for low-carbon transportation greenhouse gas reduction fund investments for FY 2014-2015

(http://www.arb.ca.gov/msprog/aqip/fundplan/fy1415_aqip_workshop_notice_msc1403_2_040314.pdf).

On March 14, 2014, CARB released a 45-day notice for the Draft Environmental Analysis Scoping Plan update (http://www.arb.ca.gov/cc/scopingplan/2013_update/notice_5_22_2014.pdf).

Comments are due April 28, 2014. The public hearing will be held at CARB's Board meeting on May 22, 2014. CARB has released Appendices B, C and F

(<http://www.arb.ca.gov/cc/scopingplan/document/updatedscopingplan2013.htm>). The first of three roundtable events for SB 375 is scheduled for April 9, 2014.

A public meeting to discuss changes to the Carl Moyer guidelines is scheduled for May 2, 2014 in Sacramento.

A workshop to discuss sustainable freight strategies is scheduled for May 5, 2014, from 9:30 a.m. to 6:00 p.m. in the Sierra Hearing Room at CARB.

The following items are tentatively scheduled to go before CARB's Board April through June 2014:

- Alternative Diesel Fuel Regulation
- Retrofit Diesel Particulate Filter and New Engine Technology Field Survey Results
- Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen, and Other Criteria Pollutants From In-Use On-Road Diesel-Fueled Vehicles
- Proposed Approval of the Amendments to the CA Cap on GHG Emissions and Market-Based Compliance Mechanisms (Second Hearing of Two)
- Regional Haze Mid-Course Review
- Proposed First Update to the Climate Change Scoping Plan (Second Hearing of Two)
- Proposed Adoption of a Rice Protocol for Cap and Trade Regulation (First Hearing of Two)
- 8-Hour Ozone SIP Emission Inventory Submittal
- Consider Approval of the Imperial PM2.5 Plan
- Update to the Enhanced Fleet Modernization Program Guidelines

Discussion

Mr. Wallace asked if CARB could provide the links to notices for the upcoming workshops. Mr. Gallenstein agreed to include the links on the monthly CARB Calendar for Control Measures that is forwarded to the HRAG.

CONSENSUS BUILDING

Jayne Joy reported that the HRAG Ad Hoc Consensus Building Working Group met on February 19, 2014, after the regular HRAG meeting and discussed the following issues:

CARB's Sustainable Freight Strategy

Karen Buckley gave a presentation on CARB's Sustainable Freight Strategy. The working group recommended the formation of focus groups in response to her request for stakeholder involvement.

California Freight Advisory Committee Activities

The California Freight Mobility Plan is available for public review, and comments are due by April 3, 2014. The California Freight Advisory Committee (CFAC) will be meeting at SANBAG on March 19, 2014.

Ms. Joy noted that the following topics have been identified as items for discussion at future working group meetings:

- Presentation by UCLA on Health Impacts Assessments
- Presentation by Jerilyn Mendoza of So Cal Gas on Pathway Technologies and Goods Movement

Discussion

Dr. Lyou added that the SoCalGas presentation will most likely be a follow up to the report that was recently done for the Gas Company (http://www.gladstein.org/pdfs/Pathways_to_Near-

[Zero Emissions 1-24-14.pdf](#)). Mr. Montez suggested that the working group contact NALEO (National Association of Latino Elected Officials) to obtain census information which the group may find to be useful.

SUBCOMMITTEE STATUS REPORTS

A. Freight Sustainability (Lee Wallace).

Dan McGivney provided the following update. Four chapters of the draft California Freight Mobility Plan (<http://dot.ca.gov/hq/tpp/offices/ogm/cfmp.html>) have recently been released and will be discussed at the CFAC meeting at SANBAG on March 19, 2014 (http://www.dot.ca.gov/hq/tpp/offices/ogm/CFAC/San_Bernardino_031914/CFAC_Agenda_031914.pdf#zoom=65). The economist Dr. John Husing will also be giving a presentation on “Warehousing and Logistics in the Inland Empire.” Dr. Lyou acknowledged that traffic congestion needs to be better coordinated but without negatively impacting communities. Mr. Wallace stressed the importance of the placement of the infrastructures which will also draw heavy traffic.

B. Small Business Considerations (Bill LaMarr)

Mr. LaMarr provided an update on the Clean Up, Green Up Program. A group of stakeholders met with staff from the Los Angeles City Planning Department on March 14, 2014, to express their concerns and recommendations. The primary issues of concern were (1) education and incentives to businesses and (2) the possibility of increased administrative burden on businesses from increased fees. Another concern for new businesses is the possibility of rezoning.

C. Environmental Justice (Curt Coleman)

Mr. Coleman reported that OEHHHA (Office of Environmental Health Hazard Assessment) updated the CalEnviroScreen (version 1.1) screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution. CalEnviroScreen 1.1 uses the same methodology as the previous version except that the indicator for race/ethnicity was removed from the calculation of a community’s score. This change was made to facilitate the use of the tool by government entities that may be restricted from considering race/ethnicity when making certain decisions.

D. New Source Review (Bill Quinn)

Mr. Quinn reported that the subcommittee will be meeting at 1:00 p.m. on March 27, 2014, at SCAQMD in Conference Room CC-2. Mohsen Nazemi, SCAQMD’s DEO of Engineering and Compliance, will be giving a presentation on ERC application review and verification process.

E. Climate Change (David Rothbart)

Mr. Rothbart reported that the subcommittee will be meeting at SCAQMD in Conference Room CC-8 on Tuesday, April 15, 2014. The subcommittee will be discussing the Supreme Court’s oral arguments on the EPA’s greenhouse gas permitting authority. CARB staff will be providing an update on the scoping plan, with a focus on the energy and transportation sectors; and EPA will be giving a presentation on climate change adaptation. A professor from Stanford University will also be discussing climate change and drought in California.

REPORT FROM AND TO THE STATIONARY SOURCE COMMITTEE

Dr. Chang reported that the following items are scheduled to be discussed at the Stationary Source Committee meeting on March 21, 2014:

- Status Report on NOx RECLAIM Rulemaking
- Proposed Rule 1153.1 – Emissions of Oxides of Nitrogen from Commercial food Ovens
- Proposed Rule 1111 – Reduction of NOx Emissions from Natural-Gas-Fired, Fan-Type Central Furnaces
- Proposed Amendments to Rule 1155 – Particulate Matter (PM) Control Devices

Dr. Chang added that EPA has requested that SCAQMD specify in Rule 1155 that all other rules, such as Rule 401 and Rule 404, still apply.

Discussion

Mr. Carroll asked what the status is on Proposed Rule 1304.2. Dr. Chang responded that the stakeholders meetings are tentatively scheduled to begin in April. Mr. LaMarr asked when the report by Abt Associates will be available (Abt Associates was hired to review and make recommendations on the SCAQMD's socioeconomic assessments-<http://www.aqmd.gov/hb/attachments/2011-2015/2013Oct/2013-Oct4-004.pdf>). Dr. Chang responded that a draft report will be available at the end of June; and staff plans to present the recommendation to the Governing Board in October. Mr. LaMarr suggested that the report be reviewed by a stakeholders group before being submitted to the Board for approval. Mr. Rothbart asked if the AQMP schedule is available yet. Dr. Chang responded that the kick-off meeting is scheduled for April 10, 2014.

OTHER BUSINESS

The HRAG requested that SCAQMD staff give a presentation on the Federal Surface Transportation Law (MAP-21) Reauthorization Bill at the next meeting. Dr. Lyou asked staff to make the arrangements.

PUBLIC COMMENT

There were no public comments

ADJOURNMENT

The meeting was adjourned at 11:26 a.m. The next meeting of the Home Rule Advisory Group is scheduled for 10:00 a.m. April 23, 2014.

STATUS REPORT ON LITIGATION

OFFICE OF GENERAL COUNSEL

DATE: March 12, 2014
TO: Home Rule Advisory Group
FROM: William B. Wong, Principal Deputy District Counsel
SUBJECT: Status Report Regarding Litigation

1. NEW CASE: ***Exide Technologies, Inc. v. South Coast Air Quality Management District, Los Angeles Superior Court Case No. BS146770***

NATURE OF CASE: *On February 7, 2014, Exide filed a petition for writ of mandate and complaint for injunctive and declaratory relief challenging the amendments to Rule 1420.1 adopted January 10, 2014. The claims include alleged violations of the California Environmental Quality Act and arbitrary and capricious rulemaking. While Exide purports to only be challenging the negative pressure requirement, their CEQA arguments, if successful, could invalidate the entire rule.*

STATUS: *Exide has filed a motion for preliminary injunction to stay the effectiveness of the negative pressure requirements which becomes applicable April 10, 2014. The motion will be heard March 28, 2014.*

2. CASE: ***U.S. EPA Petition for Declaratory Order – Surface Transportation Board, Docket No. FD35803***

NATURE OF CASE: On January 24, 2014, EPA filed a petition with the Surface Transportation Board (STB), which primarily regulates railroads, for an order determining whether SCAQMD Rules 3501 and 3502 would be preempted if EPA approved them into the SIP. The railroads argue that these rules, which limit idling to 30 minutes in certain cases, and required simple records of events exceeding 30 minutes, are preempted by the Interstate Commerce Commission Termination Act (ICCTA).

STATUS: Any interested person may file a reply with the STB within 20 days (February 13, 2014). *We filed pleadings supporting our position and obtained support from Communities for Environmental Justice, CARB, and the State of Massachusetts, which has a SIP-approved rule applicable to locomotive idling.*

On February 26, the STB opened a proceeding giving the parties until March 28 to file further evidence and arguments and until April 16 to file replies.

3. CASE: SCAQMD v. U.S. EPA, U.S. Court of Appeals, Ninth Circuit, Case No. 13-73936

NATURE OF CASE: Pursuant to the Board's directive, staff filed a challenge to EPA's action creating a separate nonattainment area for Morongo lands with a classification of "severe-17" for ozone. SCAQMD is concerned that this gives businesses locating at Morongo a competitive advantage over South Coast Basin facilities so that facilities will preferentially locate there, causing adverse air quality effects downwind in the Coachella Valley.

STATUS: The parties agreed to participate in the Ninth Circuit Court of Appeals mediation program. *There was a mediation conference call held on February 12, 2014, and the parties have held a call on March 5, 2014.*

4. CASE: Utility Air Regulatory Group v. U.S. EPA, U.S. Supreme Court Case No. 12-1146 (consolidated with 12-1272, 12-1248, 12-1254, 12-1268, and 12-1269)

NATURE OF CASE: Various industry groups filed a challenge to EPA's GHG permitting rules, arguing that the Clean Air Act did not authorize EPA to regulate GHGs from stationary sources. The D.C. Circuit Court of Appeals upheld EPA's rules. The U.S. Supreme Court granted review.

STATUS: Pursuant to prior authorization, SCAQMD joined an amicus brief, together with UCLA Law School's Emmett Center for Climate Change, addressing the practicalities of GHG permitting, our experience so far, and our support for EPA's phased approach to GHG permitting. *The case was argued in the U.S. Supreme Court on February 24, 2014.*

5. NEW CASE: Friends of the Fire Rings v. South Coast Air Quality Management District and City of Newport Beach, Orange County Superior Court No. 30-2013-00690328-CU-WM-CXC

NATURE OF CASE: Petitioners challenge the SCAQMD's adoption of amendments to Rule 444 relating to fire rings on the beach. The City of Newport Beach has been added as a "DOE" defendant, since that City has voted to remove about half of the fire rings at Balboa Pier and Corona del Mar. The complaint alleges violation of the Coastal

Act, CEQA, the Equal Protection Clause, and numerous provisions of the Health & Safety Code pertaining to the substance and process for the rule amendments. The District was served on December 12, 2013, and the City of Newport Beach on January 2, 2014.

STATUS:

A hearing on Petitioner's motion for Preliminary Injunction, which sought to stay the Board's July 2013 amendments regarding beach burning, was held on January 31, 2014. Orange County Superior Court Judge Judge Robert Moss denied the motion for preliminary injunction, finding that the District had presented adequate evidence to show that wood burning can be harmful to human health and that the amendments allowed the use of charcoal and liquid fuel and did not mandate the specific configuration of the fire rings.

The parties have met and conferred and will stipulate to transfer the case to San Diego County pursuant to section 30806 of the Public Resources Code. We filed a stipulation to transfer venue to San Diego County.

6. CASE:

Natural Resources Defense Council, Inc., et al. v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 13-70544

NATURE OF CASE:

On February 12, 2013, Natural Resources Defense Council and Communities for a Better Environment filed a lawsuit against EPA challenging its approval of South Coast Air Quality Management District Rule 317, Clean Air Act Non-Attainment Fee. Rule 317 is a local fee rule submitted to address section 185 of the Clean Air Act with respect to the 1-hour ozone standard for anti-backsliding purposes. Rule 317 relies on fees imposed on mobile sources under state law. EPA finalized approval of Rule 317 as an alternative to the program required by section 185 and determined that the District's alternative fee-equivalent program is not less stringent than the program required by section 185.

STATUS:

EPA's motion to continue the stay pending the San Joaquin lawsuit was denied. The court established the following briefing schedule: the opening brief is due April 30, 2014; the answering brief is due May 30, 2014; the respondent-intervenors' briefs are due June 23, 2014; and the optional reply brief is due within 28 days after service of respondent's answering brief. EPA has moved to extend the briefing schedule through October of this year.

7. **CASE:** **Communities for a Better Environment, et al. v. U.S. EPA, et al., U.S. Court of Appeals, Ninth Circuit, Case No. 13-70167**

BACKGROUND: On January 14, 2013, Communities for a Better Environment (CBE) and California Communities Against Toxics (CCAT) filed a Petition for Review of EPA's final rulemaking that was issued on November 14, 2012. The challenged rulemaking constituted EPA's supplemental, final action to approve a source-specific SIP revision allowing the District to transfer offsetting emission reductions for PM₁₀ and SO_x to the CPV Sentinel Energy Project, a natural gas fired power plant, through the AB 1318 tracking system. EPA first issued a final rulemaking to approve the District's transfer of offsets to the CPV Sentinel Energy Project on April 20, 2011. That rulemaking was challenged by the same Petitioners through a Petition to Review in the Ninth Circuit (Case No. 11-71127). After briefing and oral argument in that case, the Ninth Circuit issued an order remanding the final rule, without vacatur, to EPA on July 26, 2012. This second, final rulemaking is the product of EPA's re-examination of the April 20, 2011 rulemaking.

STATUS: The Board authorized staff to file a motion to intervene on behalf of EPA, which CPV Sentinel and the District have each filed. The court granted both parties' motions. *Petitioners' opening brief was filed on February 7, 2014.* Respondent's answering brief is due on or before May 7, 2014; and the Intervenor's (CPV Sentinel, LLC and the District) briefs are due on or before June 9, 2014; Petitioners' optional reply is due on or before June 30, 2014.

8. **CASE:** **Medical Advocates for Healthy Air, et al v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-73386**

BACKGROUND: On October 19, 2012, Petitioners filed a Petition for Review of U.S. EPA's approval of San Joaquin Valley Air Pollution Control District's SIP revision to include SVAPCD's equivalent alternative program to meet the Clean Air Act's section 185(e) requirements triggered by its failure to attain the revoked one-hour ozone standard. EPA based its approval on its determination that the Clean Air Act allows for such an equivalent program so long as it is not less stringent than straight section 185(e) compliance.

STATUS: With your Board's approval, we as well as SJAPCD and National Environmental Development Association's Clean Air Project moved to intervene in this case. All three requests were granted. All briefing on the case has been completed and numerous other associations have filed amicus briefs. EPA published approval of our section 185(e) equivalent program on December 14, 2012. Different petitioners filed a challenge to SCAQMD's Rule 317 on

January 14, 2013. *The case is no longer stayed.* All briefing has been completed, and the parties await a hearing date.

9. CASE: **People ex rel. Imperial County APCD, et al. v. United States Department of Interior, et al., Ninth Circuit Court of Appeals Case No. 12-55856**

NATURE OF CASE: The Board authorized staff to file an amicus brief in support of Imperial County APCD's appeal of a federal district court decision holding that it lacked standing to sue the U.S. Department of the Interior under the National Environmental Policy Act and that the federal government had not waived sovereign immunity regarding failure to comply with the "General Conformity" provisions of the Clean Air Act. The lawsuit arose out of a challenge to the approval of a water transfer between Imperial Irrigation District and three water agencies which would result in less agricultural runoff feeding the Salton Sea, and ultimate exposure of dry lakebed which would create substantial PM10 emissions.

STATUS: **(No change from last month).** The District filed a motion to file an amicus brief, along with its proposed brief, on September 19, 2011. Other air districts including San Joaquin Unified AQMD, Sacramento Metro AQMD, Santa Barbara County APCD, and North Coast APCD joined the District's brief. The amicus brief argues that air districts have standing to enforce NEPA, air districts have sovereign interests in enforcing their conformity rules, and the Clean Air Act and Administrative Procedures Act waive sovereign immunity to allow air districts to enforce their rules. The court has deferred ruling on the District's motion to file an amicus brief until the case is heard on the merits. This case has now been scheduled for oral argument on December 4, 2013. This case was argued on December 4, 2013, before the Ninth Circuit Court of Appeals in Pasadena. We are awaiting the Court's decision.

10. CASE: **Communities for a Better Environment, California Communities Against Toxics, Desert Citizens Against Pollution, Natural Resources Defense Council, Inc., and Physicians for Social Responsibility-Los Angeles v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-71340**

NATURE OF CASE: This lawsuit challenges on unspecified grounds EPA's final approval of the 8-hour ozone SIP applicable to the South Coast Air Basin.

STATUS: **(No change from last month.)** The Governing Board at its May 4, 2012 hearing approved filing a Motion to Intervene. The District timely filed a joint motion to intervene with SCAG, which was not

opposed by Petitioners or EPA. The motion has been granted. EPA has published a proposed settlement agreement, which calls for the voluntary dismissal of this lawsuit after EPA's publication of its final notice of action on the District's 1-hour ozone plan.

11. CASE: **Medical Advocates for Healthy Air, et al. v. U.S. EPA, U.S. Court of Appeals, Ninth Circuit, Case No. 12-70630**

NATURE OF CASE: This lawsuit challenges EPA's December 30, 2011 determination that the South Coast Air Basin Area, the San Joaquin Valley Area and the Southeast Desert Modified Air Quality Maintenance Area did not attain the now revoked one-hour ozone standard by the deadline for attainment established under the 1990 amendments to the Clean Air Act (76 Fed. Reg. 82,133). Petitioners take issue with the statutory authority under which EPA made those determinations and assert that EPA should have made its finding under section 179(c) of the Clean Air Act, 42 U.S.C. § 7509(c), a section that they claim would require the nonattaining areas to develop new attainment plans for the now revoked one-hour ozone standard.

STATUS: Your Board granted authorization and the District filed its motion to intervene on behalf of EPA on March 28, 2012. Petitioners opposed the District's motion to intervene and the Court referred the motion and any related filings to the panel assigned to decide the merits of the appeal. San Joaquin Valley Unified Air Pollution Control District's unopposed motion to intervene was granted by the Court. On April 12, 2012, Petitioners and EPA held a telephone conference with the Circuit Mediator. Pursuant to the agreement of the parties, the briefing schedule was vacated and the case was stayed. A mediation conference call was held on January 16, 2014 during which it was reported that San Joaquin's 1-hour ozone plan was adopted and approved by CARB and forwarded to EPA. Based on these representations, the parties have agreed to continue to hold the case in abeyance until EPA issues a final decision on the Valley's 1-hour ozone plan. The court has entered an order to this effect and will schedule a follow-up conference call on June 19, 2014.

12. CASE: **Physicians for Social Responsibility–Los Angeles, et al. v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-70016 (Monitoring)**

NATURE OF CASE: On January 3, 2011, a number of environmental groups filed a challenge in the Ninth Circuit Court of Appeals to EPA's approval of the District's annual air monitoring plan. They argue that EPA should have required SCAQMD to install six (6) air monitors to detect elevated levels of PM2.5 in areas very near heavily traveled

roadways. Our position and EPA's is that such monitoring is not required. This is the same issue that was raised in NRDC v EPA, 638 F.3d 1183 (9th Cir. 2011) (conformity case) in which the petitioners were unsuccessful.

STATUS:

(No change since last month.) Both EPA and the District have filed their opposition briefs, and Petitioners have filed their reply brief. EPA has published its final rule on PM-2.5 and has required near-road monitoring. We are awaiting a hearing date from the court.

13. CASE:

Physicians for Social Responsibility et al. v. EPA, Ninth Circuit Court of Appeals Case No. 12-70079 (PM2.5)

NATURE OF CASE:

On November 9, 2011, the U.S. EPA approved in part and disapproved in part the 2007 PM2.5 SIP (including elements from SCAG, SCAQMD, and CARB) which is part of the 2007 AQMP. The only part disapproved was the contingency measures. Physicians for Social Responsibility and others filed a challenge to EPA's approval in the applicable Court of Appeals. The Board authorized staff to file a motion to intervene to help EPA defend the case and that motion (filed jointly with SCAG) was granted. Environmental petitioners raised several issues in opposition to the EPA's proposed SIP approval, including issues regarding the enforceability of control measures, and lack of near-roadway monitoring.

STATUS OF CASE:

(No change from last month.) The Ninth Circuit mediator held a conference with all the parties on February 21, 2012. Following discussions, the mediator set a schedule for the petitioners to submit a proposal to settle the case to defendants and intervenors by March 20. The mediator set a further conference call for April 13 to determine whether further discussion would be fruitful or whether a briefing schedule should be established. Petitioners provided a proposal which would have called for staff to agree to near roadway monitoring for PM2.5, to adopt new contingency measures which would be developed through mediation with the petitioners, and to agree to EPA imposing sanctions on the region if CARB does not adopt all its control measures by January 1, 2014. Staff concluded that this proposal was unacceptable and so notified the Petitioners. Petitioners' Opening Brief was filed on July 13, 2012; EPA's Respondent's brief was filed on October 26, 2012; and our Joint Intervenor's brief was filed on November 16, 2012. Petitioners' Reply Brief was filed on February 4, 2013. We are awaiting the scheduling of oral argument.

14. CASE: **Communities for a Better Environment, California Communities Against Toxics, v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-72358**

NATURE OF CASE: On July 24, 2012, Communities for a Better Environment and California Communities Against Toxics filed a Petition for Review of EPA's final rulemaking approving a revision to the District's portion of the California State Implementation Plan that incorporates Rule 1315 – Federal New Source Review Tracking System. The approved SIP revision establishes the procedures for demonstrating equivalency with federal offset requirements by specifying how the District will track debits and credits in its Offset Accounts for Federal NSR Equivalency for specific federal nonattainment pollutants and their precursors.

STATUS: **(No change from last month.)** The Board authorized staff to file a motion to intervene on behalf of EPA. Our motion to intervene was filed on August 17, 2012 and on August 21, 2012 the court issued an order granting the District's motion. The opening brief was filed by Petitioners on November 15, 2012. EPA's answering brief was filed by February 20, 2013 and the District's intervenor brief was filed on April 3. Petitioners' optional reply brief was filed on June 7, 2013. We are awaiting the scheduling of oral argument.

15. CASE: **California Building Industry Ass'n v. Bay Area Air Quality Management District, California Court of Appeal, First Appellate District, Case Nos. A135335 & A136212**

NATURE OF CASE: The Board authorized staff to file an amicus brief in support of Appellant Bay Area AQMD. In 2010, the Bay Area AQMD adopted a series of thresholds of significance ("Thresholds") for greenhouse gases ("GHGs") and toxic air contaminants ("TACs"). In response to the Bay Area's adoption of the Thresholds, the California Building Industry Association ("BIA") filed suit, asserting, among other things, that: (1) adopting the Thresholds was a "project" under CEQA and the Bay Area was thus required to analyze the environmental impacts of adopting the Thresholds; and (2) that the TAC Receptor Thresholds unlawfully required an analysis of the effect of the existing toxic air pollution on the proposed project. The trial court held that the Bay Area's adoption of the Thresholds was a "project" under CEQA, but the court declined to reach the issue of whether the TAC Receptor Thresholds were contrary to CEQA. The Bay Area has appealed the trial court's ruling that adopting the Thresholds is a "project" under CEQA, and BIA has requested that the court of appeal resolve its claim that the TAC Receptor Thresholds violated CEQA.

STATUS:

The California Court of Appeal issued a decision on August 13, 2013. The court held that the promulgation of thresholds of significance by a public agency is itself not a “project” subject to CEQA review. It also held that the TAC Receptor Thresholds are not facially invalid because they can be used during CEQA review of a proposed project in ways other than analyzing the effect of the pre-existing pollution on the proposed project, such as determining whether the proposed project itself would increase the TACs to a cumulatively considerable level, determining the health risks to students when a school project is located within a specified radius of a source of TACs, or determining whether the project is consistent with the area’s general or specific plan. The court declined to decide whether the TAC Receptor Thresholds unlawfully required an analysis of the pre-existing pollution on the proposed project, stating that that discussion is better reserved for a case in which the Thresholds have actually been applied to a proposed project. The CBIA has filed a petition for review. On November 26, 2103, the California Supreme Court granted review of the question of what circumstances under CEQA, if any, requires an analysis of how existing environmental conditions will impact future residents or receptors of a proposed project. We intend to file an amicus brief in support of BAAQMD in the Supreme Court. The amicus brief needs to be filed by April 16, 2014.

16. CASE:

Friedman Marketing v. SCAQMD, California Court of Appeal, Second Appellate District, Case No. B249836

NATURE OF CASE:

Appellant appeals the lower court’s adverse decision granting the SCAQMD’s demurrer without leave to amend. Appellant had filed a First Amended Complaint seeking declaratory relief that the SCAQMD could not enforce its Rule 461 against appellant’s customers for installing uncertified vapor recovery equipment on the ground that CARB’s regulations exempted the equipment from certification. Despite suing CARB, and getting an adverse decision from the court, Petitioner nevertheless sued the District for allegedly improperly enforcing CARB’s certification requirement. The court granted the District’s demurrer mainly on the ground that Appellant had failed to exhaust its administrative remedies by not completing its application for certification to CARB.

STATUS:

Appellant’s Opening Brief was filed January 23, 2014. Our brief was filed February 19. *Appellant’s reply brief would be due March 11.*

17. CASE: **SCAQMD v. Harvey Eder, California Court of Appeal, Second Appellate District, Case No. B251627**

BACKGROUND: SCAQMD appeals from the trial court's judgment granting SCAQMD's dismissal for failure to timely file an amended complaint but without prejudice. Mr. Eder had filed a cross-appeal of the judgment granting dismissal. On June 12, 2013, the court sustained the SCAQMD's demurrer with 30 days leave to amend to Mr. Eder's complaint that the SCAQMD was required to include in its AQMP a requirement to immediately convert the Basin to solar energy. Mr. Eder did not file an amended complaint, and on September 13, 2013, the District moved to dismiss the complaint with prejudice. The court granted the dismissal but without prejudice, effectively allowing Mr. Eder to re-file his complaint.

STATUS: The clerk's transcript was completed on January 23, 2014. *Our opening brief was filed February 28, 2014, and Mr. Eder's reply is due April 1, 2014.*